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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/649,391	08/26/2003	Charles Lee Asplin	ASPL-008	6074
21877	7590	10/13/2005	EXAMINER	
CURTIS V HARR P O BOX 2842 FARGO, ND 581082842			FREAY, CHARLES GRANT	
			ART UNIT	PAPER NUMBER
			3746	
DATE MAILED: 10/13/2005				

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	<b>Application No.</b> 10/649,391	<b>Applicant(s)</b> ASPLIN, CHARLES LEE	
	<b>Examiner</b> Charles G. Freay	<b>Art Unit</b> 3746	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☐ Responsive to communication(s) filed on \_\_\_\_.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-20 is/are pending in the application.  
4a) Of the above claim(s) \_\_\_\_ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 9-13 is/are allowed.
- 6) ☒ Claim(s) 1-8, 14 and 15 is/are rejected.
- 7) ☒ Claim(s) 16-20 is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
a) ☐ All    b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |   |   |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)   | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. ____. |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)  | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date <u>8/2003</u> . | 6) <input type="checkbox"/> Other: ____.  |

## **DETAILED ACTION**

### ***Claim Objections***

Claim 14 is objected to because of the following informalities: in line 12 "interconnected" should be "interconnect". Appropriate correction is required.

### ***Claim Rejections - 35 USC § 112***

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claims 6-8 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

The claims are vague and indefinite because in claim 6 it is unclear what is meant by a "portable engine". As shown in the figures, and described in the specification, the engine is directly connected to the pump and is not disconnected and separately portable. The engine along with the pump is mounted on a truck, but this would make the entire device portable. It is unclear what limitation is being suggested by portable.

### ***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

Art Unit: 3746

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1 and 2 are rejected under 35 U.S.C. 102(b) as being clearly anticipated by Zollner et al (USPN 5,336,052).

Zollner et al discloses a viscous material pump having a material bin ( having sloping sides at the bottom of which an auger (36) is mounted. The auger is driven by a hydraulic motor (38) of variable speed. The auger feeds a pump assembly having a pump chamber (10,12) having a pump ram (14,16) which is driven by a hydraulic cylinder (22,24), and a one-way valve assembly (26,28) feeds to a delivery hose (56).

### ***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 3 and 4 are rejected under 35 U.S.C. 103(a) as being unpatentable over Zollner et al in view of Stephens (USPN 5,141,363)

As set forth above Zollner et al discloses the invention substantially as claimed. Zollner et al do not disclose that the auger is reversible. Stephens discloses a similar viscous material pumping system having an auger (82,84) mounted in the bottom of a bin (see Fig. 7) which feeds a pump (95) that delivers cement from a hose (62) to a desired location. Stephens also sets forth that the hydraulic drive motor (86) from the auger is

Art Unit: 3746

reversible (see col. 16 lines 20-25). At the time of the invention it would have been obvious to one of ordinary skill in the art to make the auger of Zollner et al reversibly driven in order to provide for easy cleanout of the hopper.

Claims 5-8 are rejected under 35 U.S.C. 103(a) as being unpatentable over Zollner et al in view of Stephens as set forth in the rejection of claims 3 and 4 above, and further in view of Zimmerman (USPN 3,485,481).

As set forth above Zollner et al in view of Stephens discloses the invention substantially as claimed but does not set forth a hydraulic pump connected to the auger motor and the hydraulic cylinders. As shown in Fig. 1, Zimmerman discloses a similar auger and reciprocating pump device. As shown in Fig. 3 there is a pump (128) connected in a driving relationship to the hydraulic motors (50, 72) of the pump system through a manifold (X,Y). There is inherently a drive motor for the pump. At the time of the invention it would have been obvious to one of ordinary skill in the art to use a hydraulic drive system as disclosed in Zimmerman to drive the hydraulic motors of Zollner et al in order to provide hydraulic power from a single drive pump.

Also, as noted above Zimmerman inherently has a drive motor for the pump providing hydraulic power. Further, as shown in Fig. 8, the devise is mounted on a portable cart/truck. At the time of the invention it would have been obvious to one of ordinary skill in the art to provide a motor and have the entire pumping apparatus placed on a cart for ease of transportation.

Claims 14 and 15 are rejected under 35 U.S.C. 103(a) as being unpatentable over Zollner et al in view of Zimmerman.

As set forth above Zollner et al discloses the invention substantially as claimed. Zollner et al do not disclose that there is a hydraulic pump connected to the auger and the hydraulic cylinder through a manifold. As shown in Fig. 1, Zimmerman discloses a similar auger and reciprocating pump device. As shown in Fig. 3 there is a pump (128) connected in a driving relationship to the hydraulic motors (50, 72) of the pump system through a manifold (X,Y). At the time of the invention it would have been obvious to one of ordinary skill in the art to use a hydraulic drive system as disclosed in Zimmerman to drive the hydraulic motors of Zollner et al in order to provide hydraulic power from a single drive pump.

#### ***Allowable Subject Matter***

Claims 9-13 are allowed.

Claims 16-20 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

#### ***Conclusion***

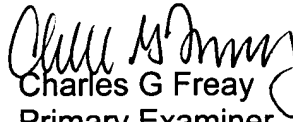
Any inquiry concerning this communication or earlier communications from the examiner should be directed to Charles G. Freay whose telephone number is 571-272-

Art Unit: 3746

4827. The examiner can normally be reached on Monday through Friday 8:30 A.M. to 5:30 P.M..

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Timothy Thorpe can be reached on 571-272-4444. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

  
Charles G Freay  
Primary Examiner  
Art Unit 3746

CGF  
October 11, 2005